IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1107 OF 2004

M/s. Chemtex Engineering of
India Limited, a limited
liability company duly
registered under the Companies
Act 1 of 1956 and having its
registered office at Chemtex
House, Hiranandani Gardens,
Main Street, Powai,
Mumbai-400 076. .... Petitioners

- Versus -

1. Municipal Corporation of
   Greater Bombay, a statutory
   Corporation constituted
   under the Bombay Municipal
   Corporation Act, 1888 and
   having its office at
   Mahanagarpalika Bhavan,
   Mahanagarpalika Marg,
   Bombay 400 001.
2. The Municipal Commissioner
   of Bombay Municipal
   Corporation having His

office at Mahanagarpalika
Bhavan, Mahanagarpalika
Marg, Bombay 400 001.

3. State of Maharashtra .... Respondents

Shri Shyam Diwan with Ms Lata Bachani i/b
M/s. I.R. Joshi & Co. for the Petitioners.
Shri K.K. Singhvi with Ms A.R. Joshi for
the Respondent Nos.1 and 2.
Shri Rajiv Chavan, Asst. Government Pleader,
for the Respondent No.3-State.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: AUGUST 25, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule made returnable forthwith. The petitioners challenge the Order No.SCR/21/2000-2001, dated 23-2-2004 and the notice dated 31-3-2004 issued by the respondent No.1-Corporation in respect of increase in the rateable value and recovery of proper tax.

2. Few facts relevant for the decision are that the petitioners are the owners of an immovable property

known as Chemtex House, situated at Hiranandani Gardens, Main Street, Powai, Mumbai. The respondent-Corporation amended on or about 28-3-2002 the assessment bill by increasing the rateable value of the said property with effect from 1-4-2000 to Rs.1,11,67,410/- while the prior rateable value was Rs.42,81,315/-. Pursuant to receipt of intimation regarding revision of the rateable value, the petitioners lodged a complaint to the concerned authority of the Corporation and the respondents by their order dated 18-4-2002 restored the rateable value to Rs.42,81,315/- with effect from 1-4-2000 and further confirmed that there were no dues outstanding on the part of the petitioners to the respondents. The petitioners thereafter received an intimation dated 22-1-2003 from the respondents to the effect that their earlier decision in respect of the rateable value had been rendered ineffective consequent to the judgment dated 23-10-2002 passed in the Writ Petition No.1531 of 2001 by this Court and that the property was being reassessed at the rate of Rs.1,11,67,410/- per annum with effect from 1-4-2000. The petitioners were called upon to file their objections, if any, within fifteen days from the receipt of said intimation otherwise the rateable value, as intimated, would stand confirmed. The petitioners by their letter dated 30-1-2003 lodged their objections to the reassessment proceedings. Further, by letter dated 7-2-2003 it was informed to the

Corporation that there was no further development or change in the circumstances after the order restoring the rateable value to Rs.42,81,351/- so as to warrant the review of the rateable value. It appears that the matter thereafter was sought to be pursued with the Corporation by the petitioners and consequently cognisance of the complaint of the petitioners was taken by the Assessor and Collector of the Corporation and hearing in that regard was fixed on 23-2-2004, on which day the said authority of the Corporation confirmed the revision of the rateable value to Rs.87,53,030/- with effect from 1-4-2000. The petitioners filed appeal against the said order dated 23-2-2004 and the same was filed in the Court of Small Causes on 5-3-2004 under Section 217 of the Mumbai Municipal Corporation Act, 1888, hereinafter called as "the said Act". The petitioners, however, did not deposit any amount over and above the old rateable value nor there was any stay order granted in the appeal. The respondents thereafter by notice dated 31-3-2004 called upon the petitioners to pay the tax demanded for the period from 1-4-2000 onwards aggregating to Rs.2,01,23,120/- within 48-hours from the receipt of the said notice, while threatening the petitioners with issuance of distress warrant in case of failure on their part to pay the said amount. The petitioners thereafter filed the present petition on 15-4-2004 which came up for hearing before this Court on

27-4-2004 and on that day while issuing notice for final disposal of the petition, the respondents were restrained by way of ad-interim relief from taking any steps to enforce the order dated 23-2-2004 or from taking any coercive action against the petitioners till the decision in the petition. The respondents filed their affidavit in reply dated 28-6-2004.

3. It is also necessary to note that there was a Writ Petition bearing No.1531 of 2001 filed in this Court by one Arvind Kottecha against the respondent-Corporation which was disposed of by this Court on 23-10-2002 while recording the statement of the learned Senior Counsel appearing for the respondent-Corporation for withdrawal of certain circulars and consequently holding that all actions taken and the assessment pursuant to the circulars which were withdrawn were rendered ineffective and further that it was open to the respondents to reassess the properties for the purpose of property taxes in accordance with law. It is not in dispute that the petitioners were not a party to the said writ petition or any other similar such petition which was stated to have been disposed of on the said day by this Court.

4. The impugned order and the impugned notice are sought to be challenged on the ground that the

respondent-Corporation has no jurisdiction and authority or power to reopen the assessments once finalised, and since the assessment in relation to the rateable value for the financial year 1-4-2001 to 31-3-2002 was finalised by the order of 18-4-2002, it could not have been reopened by the notice dated 22-1-2003 or by order dated 23-2-2004. Secondly, the Corporation is not entitled to levy the property tax retrospectively i.e. for the year prior to the financial year in which or in respect of which the assessment of the rateable value is sought to be done. Thirdly, that there is no change in the circumstances from the date of the previous assessment to warrant or justify the revision of the rateable value, and the decision of the Division Bench in the Writ Petition No.1531 of 2001, dated 23-10-2002, does not entitle the Corporation to reopen the assessment or reassess the properties of the petitioners in relation to which the rateable value was already finalised by the order dated 18-4-2002. The impugned order and the notice, on the other hand, are sought to be justified, while admitting that there is no power under the statute to reopen the assessment, the judgment of this Court in the Writ Petition No.1531 of 2001 specifically empowers the Corporation to reassess the properties for the purpose of property taxes in cases where the assessment was done on the basis of the circulars which were withdrawn and consequently the

assessment done on the basis of those circulars were rendered ineffective and the assessment in relation to the petitioners' properties finalised on 18-4-2002 being one of such assessments, no fault can be found with the impugned order or the notice, and secondly, even though the petitioners were not parties to the Writ Petition No.1531 of 2001, the judgment being of declaratory nature, it is binding on all the assesses of the Corporation whose assessments were rendered ineffective pursuant to the withdrawal of the circulars based on which the assessment of the rateable value of their property was done.

5. Before dealing with the merits of the case, it is necessary to address to the preliminary objection sought to be raised on behalf of the respondents. It is the contention of the respondents that the petitioners have made false statements in the petition and even the justification sought to be given by way of rejoinder discloses suppression of fact. Besides, the petitioners have already filed an appeal and all the points sought to be raised in the petition can very well be dealt with by the Court dealing with the appeal and the party is not entitled to choose both the remedies simultaneously. Drawing attention to ground (j) wherein it has been stated that the impugned order was passed in violation of the principles of natural justice as no opportunity

was given to the petitioners to represent their case, it is sought to be contended on behalf of the respondents that the last para in relation to the hearing which took place on 23-2-2004, it was clearly noted therein that "Since Shri V.N. Surve, the representative of the assessee Company has not asked for Speaking Order the entire proceeding of the hearing of the complaint is explained to him and order fixing the R.V. of Rs.87,53,030/- was handed over to him". A sheet of paper stated to be letter of authority and disclosing the signature of a person by name A.N. Shirodkar was also produced in the course of the arguments by the learned counsel for the respondents stating that he was the authorised representative for the petitioners and had filed the said authority and the said paper disclosed the authority to the said Shirodkar on behalf of the petitioners and yet the petitioners in the affidavit filed by Vikrant N. Surve have stated that no representative by name of A.N. Shirodkar had represented the petitioner-company. The learned Advocate appearing for the petitioners, on the other hand, drawing attention to the order of the Division Bench in Appeal No.243 of 2004 in Writ Petition No.410 of 2004 **{Indian Express Newspapers (Bombay) Ltd. and Anr. v. The Municipal Corporation of Greater Mumbai & Anr.}**, passed on 13-4-2004 submitted that merely because the petitioners have filed an appeal, that would not

disentitle the petitioners from challenging the impugned order and the notice if the petitioners are able to satisfy the Court that the same are without jurisdiction and beyond the statutory powers of the Corporation, while further fairly admitting that the adjudication regarding the merits of the case and about the justification for revision from the financial year 1-4-2002 onwards could be a subject-matter of the appeal, nevertheless, the revision of the assessment for the period prior to 31-3-2002 being without jurisdiction, the same can be adjudicated in writ petition, while restricting the appeal to the period after 31-3-2002 in terms of the order dated 13-4-2004. The learned Advocate, however, also submitted that once the exercise of reassessment being shown to be totally without jurisdiction, nothing would prevent the petitioners from agitating the same in the writ petition and the fate of the appeal would depend upon the order to be passed in the petition. Drawing attention to the proceedings before the investigating officer of the respondent-Corporation which took place on 23-2-2004, the learned Advocate for the respondents submitted that the same would apparently disclose that Shri V.N. Surve, who had appeared on behalf of the petitioners, had requested for postponement of the hearing and when he was asked to argue his case, he had informed that he was instructed merely to seek postponement and he was

not in a position to argue the case for the petitioners, and in those circumstances the postponement having been refused, the petitioners are justified in contending about failure on the part of the authorities to comply with the principles of natural justice as there was no fair opportunity to the petitioners to put forth their case before the concerned authority. While contending that the point sought to be raised being in relation to absence of power to the Corporation to reassess the rateable value once finalised, the learned Advocate for the petitioners has sought to rely upon the decisions in the matters of **Income-Tax Officer, V Circle, Madras, and another v. S.K. Habibullah,** reported in 1962 Vol.44 ITR 809, **Commisioner of Income-Tax, Bombay Presidency & Aden v. Khemchand Ramdas,** reported in 1938 Vol.6 ITR 414, **M/s. East India Commercial Co. Ltd., Calcutta and another v. Collector of Customs, Calcutta,** reported in AIR 1962 SC 1893 and **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others,** reported in AIR 1999 SC 22.

6. As regards the contention regarding false statements and suppression of facts, undoubtedly, the contents of ground (j) of para 13 relates to the contention about failure on the part of the authority to adhere to the principles of natural justice in the matter of giving opportunity of being heard to the petitioners while

deciding the matter. However, it is to be noted that the contents of ground (j) relate to the contention sought to be raised on the basis of the facts revealed in the petition and the accompanying materials. Undoubtedly, the evidence in relation to the proceedings before the respondent-authority in possession of the respondents placed by them on record reveal that when the matter came up before the authority on 23-2-2004, Shri V.N. Surve appeared on behalf of the petitioners being their representative. The very first part of the record pertaining to the proceedings of the said day by the Corporation's officer reveal that Shri Vikrant N. Surve for and on behalf of M/s. Chemtex Engineering of India Limited had appeared and presented written application for postponement of the hearing. However, considering the objections which were sought to be raised by Superintendent Kazi on behalf of the respondent-Corporation for the postponement of the hearing, the investigating officer had asked Shri V.N. Surve to argue his case. To that, he had submitted that since the assessment of the rateable value was already finalised in April, 2002, he had no further arguments in the matter. It is to be noted that the proceeding sheet recorded by the officer nowhere discloses that Shri V.N. Surve who had appeared before the authority to present the written application for postponement of the hearing was empowered to argue the case on behalf of the

petitioners or that he was fully conversant with all the facts of the case. On the contrary, the affidavit dated 16-8-2004 filed by Shri V.N. Surve discloses categorical statement to the effect that he had no authority to argue the case and he had appeared before the authority merely to request the postponement of the case. It is another thing that the petitioners could not have presumed that the authority would have acceded to the request for postponement made on behalf of the petitioners but that itself would not lead to the conclusion that Shri Vikrant N. Surve was either competent to argue the case or was fully aware of the facts relevant for decision in the matter. Considering the same, complaint about the failure on the part of the concerned authority to observe the principles of natural justice in as much as that there was no fair opportunity of being heard afforded in the matter, cannot be said to be amounting to making false statement by the petitioners. In fact, it is not a statement of fact but it is rather a submission on behalf of the petitioner based on the facts of the case. Even assuming that it is an incorrect submission, that itself cannot be sufficient to non-suit a party in the writ petition, ignoring the merits of the case.

7. As regards the false statement pertaining to the absence of authority to Shri A.N. Shirodkar and

reference to the proceedings before the authority in relation to his appearance on behalf of the petitioners, it is to be noted that undoubtedly, the proceedings dated 11-4-2002 disclose that Shri A.N. Shirodkar had appeared before the Superintendent Shri Moon of the Corporation on behalf of the petitioners but one fails to understand how the appearance of Shri Shirodkar on 11-4-2002 can be related to the proceedings which took place on 23-2-2004. Once it is not in dispute that the hearing of the matter relevant for the decision was fixed on 23-2-2004, merely because Shri A.N. Shirodkar had appeared before the authority on 11-4-2002, that would not be sufficient to contend that there was any false statement about absence of authority to Shirodkar to appear in the matter on 23-2-2004. Besides, as rightly submitted by the learned Advocate for the petitioners, the contention regarding Shirodkar being duly authorised to appear in the matter, is sought to be raised for the first time across the bar when the matter was being heard yesterday and the document in regard to the authority to Shri Shirodkar was also produced yesterday. Besides, even assuming that Shirodkar was authorised to appear on 23-2-2004, the fact remains that the noting of 23-2-2004 pertaining to the appearance on behalf of the petitioners relate to Shri Vikrant N. Surve and not to Shri Shirodkar. Undoubtedly, para 3 of the affidavit of Shri V.N. Surve, filed on 16-8-2004,

reveal a statement to the effect that:-

> "3. I further submit that the Petitioners' Company has no representative by the name of A.N. Shirodkar. He is not the Tax Consultant of the Petitioner Company nor he had any authority to represent the Petitioners before the Inquiry Officer and therefore the said A.N. Shirodkar (whom the petitioners even do not know) had no authority to represent the Petitioners before the Inquiry Officer on 11th April 2004."

It is to be noted that the said statement has been made on oath by the deponent. In answer to that, the learned Advocate for the respondent-Corporation has merely sought to produce the copy of a letter stated to have been issued by the petitioners in favour of A.N. Shirodkar on 11-4-2002. The records also reveal that Shri A.N. Shirodkar had appeared before the Superintendent Moon on 11-4-2002 and objected to the revision of the rateable value. It is also apparent that the said objection was in the proceeding in relation to the petitioner-company. However, once there is a statement on oath disclosing that A.N. Shirodkar

had no authority to appear on behalf of the petitioners on 11-4-2002, in case the respondents wanted to dispute the said statement and warrant an order of the nature which would disentitle the petitioners of being heard in the matter, the respondents ought to have filed appropriate affidavit in that regard along with the copy of the alleged authority to A.N. Shirodkar by the petitioners. Serious allegation in the nature of a false statement on behalf of the petitioners cannot be dealt with nor the petitioners can be penalised on mere submission by the learned Advocate on behalf of the respondents in that regard without there being sufficient material placed on record countering the statement made on behalf of the petitioners on oath. Even otherwise, and even assuming that there is an incorrect statement as regards the absence of authority to A.N. Shirodkar by the petitioners, that may call for some penalty but certainly it would not warrant harsh penalty in the nature of the petitioners being shunted out of the Court on that ground if the petitioners are able to disclose total absence of authority to the respondents in relation to the merits of the case pertaining to reassessment of the rateable value.

8. The law on the point that in case the statutory authorities travel beyond the scope of powers given under the statute, nothing prevents the aggrieved party

from approaching the Court for relief in exercise of writ jurisdiction, irrespective of availability of the alternative remedy, is well-settled. Here is the case of the petitioners wherein the contentions relate to total absence of power to reassess the rateable value once it is finalised and the clear admission by the learned Counsel on behalf of the respondents that the statute nowhere expressly empowers the Corporation to reopen the assessment regarding the rateable value once finalised. Undisputedly, the reopening of the assessment has been solely on the basis of the Judgment of the High Court in the Writ Petition No.1531 of 2001. In the background of this undisputed fact, and particularly the contention sought to be raised in the petition, applying the law laid down by the Apex Court in the matters of **M/s. East India Commercial Co. Limited** (supra) as well as in **Whirlpool Corporation** (supra) and further the order of the Division Bench in **Appeal No.243 of 2004** (supra), the petition in relation to reopening of the assessment for the period prior to 31-3-2002 is clearly maintainable. In Appeal No.243 of 2004 the appellants Indian Express Newspapers (Bombay) Limited had sought to challenge the revision of the rateable value for the periods 1-4-2000 to 11-1-2002, 12-1-2002 to 28-2-2002 and 1-3-2002 30-3-2002 wherein all the assessments had already been finalised by an earlier order dated 6-5-2002 and therefore the

contention was that those could not have been reopened on the basis of the decision of the Division Bench in the Writ Petition No.1531 of 2001. While observing that considering the decision of this Court in **Abdeali Shaikh Tayebali Zaidy & Anr. v. The Bombay Housing Area and Development Board & Ors.,** reported in 1988 Mh.L.J. 707, the contention which was raised appeared to be sound, the order passed by the learned single Judge in the Writ Petition No.410 of 2004 dismissing the writ petition solely on the ground of availability of appeal was set aside while restricting the dispute in the writ petition in relation to the period for which the assessment was earlier finalised by the order dated 6-5-2002 and what was subsequently reopened. Though it can be argued that the order dated 13-4-2004 is not a judgment laying down the law in that regard, nevertheless, apart from keeping in mind the judicial discipline and bearing in mind the well-established principles of law that in cases where the petitioner is, prima facie able to disclose total absence of jurisdiction or power to the concerned authority to take action sought to be impugned in the petition, mere availability of alternative remedy by way of an appeal would not be sufficient to dismiss the petition in limine. The preliminary objections sought to be raised on behalf of the respondents, therefore, are devoid of substance and are rejected.

9. Before proceeding to consider the first ground of challenge in relation to the absence of authority, as already noted above, the learned Counsel for the respondents has fairly conceded that there is no express power to reopen the assessment already finalised under the said Act and therefore it is not necessary to deal with the issue as to whether the provisions of law under the said Act empowers the Corporation to reopen the assessments already finalised. Obviously, the assessment once finalised, the Corporation would not be entitled to reopen the same in the absence of statutory provisions. However, it is the contention of the respondents that there is a specific declaration in that regard by this Court in the Writ Petition No.1531 of 2001 pursuant to withdrawal of the circulars. It would be therefore necessary to ascertain what was the decision as such by this Court in the Writ Petition No.1531 of 2001.

10. The order dated 23-10-2002 disposing the Writ Petition No.1531 of 2001 reads thus:-

> "Mr. K.K. Singhvi Learned Counsel appearing for the Respondents Corporation made statement before us that the impugned circulars namely: Circular No.AC/23/GEN dated 8th December

2000; Circular No.AC/25/GEN dated 6th January 2001; Circular No.AC/23/GEN dated 25th January 2001; Circular No.AC/39/GEN dated 16th March 2002; and Circular No.AC/1/GEN dated 3rd April 2002 are being withdrawn by the Municipal Corporation of Greater Bombay.

In view thereof obviously the said circulars do not hold field and nothing further is required to be examined by us. Obviously the action taken or assessment done pursuant to the aforesaid circulars also cannot stand. We, accordingly, hold that all action taken and assessment done pursuant to the circulars dated 8th December 2000, 6th January 2001, 25th January 2001, 16th March 2002 and 3rd April 2002 are rendered ineffective.

Writ Petition is disposed of accordingly.

Needless to say that it is always open to the Respondents to reassess the properties for the purpose of property

taxes in accordance with law."

Apparently, the order has been passed based on the concession made by the learned counsel for the Corporation in relation to the withdrawal of the circulars. It does not disclose any discussion on any point of law as such, nor findings have been arrived at pursuant to such discussion on any point of law relating to the power of the Corporation to reopen the assessments already finalised. It clearly specifies that the circulars have been withdrawn by the Corporation itself. They were not declared to be invalid or illegal or non-enforceable pursuant to any adjudication in that regard by the Court. While accepting the statement of the learned counsel on behalf of the Corporation regarding withdrawal of the five circulars referred to therein, it was observed that the natural consequence of such withdrawal would be that the action taken or the assessment done pursuant to the said circulars would not stand and therefore all actions taken and assessments done pursuant to those circulars would be rendered ineffective and in those circumstances, it would be open to the Corporation to reassess the properties for the purpose of property taxes in accordance with law. In other words, the action pertaining to the assessment done pursuant to the circulars withdrawn was held to render ineffective as a

fall-out of the withdrawal of the said circulars. However, it does not amount to saying that the assessment of all the parties who were not before the Court in the said proceedings were also rendered ineffective. The observation regarding "all actions taken and assessment done pursuant to the circulars" has to be understood in relation to the facts of the case which was before the Court in the said petition and cannot relate to those facts which were not before the Court in the said proceedings nor in relation to the parties who were not represented before that Court. Undoubtedly, once the circulars have been withdrawn and it has been observed that the assessment based on such circulars are to be rendered ineffective, it would enure to the benefit of all the parties from the day on which the said order was passed to contend that since that day the Corporation would not be entitled to assess the rateable value based on those circulars but that by itself cannot enure to the benefit of the Corporation to say that all the assessments which were already finalised in past in relation the parties who were not before the Court in the said proceedings would also be affected adversely to such parties. In fact the order dated 23-10-2002 passed in the Writ Petition No.1531 of 2001 does not lay down any proposition of law as such. It only endorses the consequences which are to follow consequent to withdrawal of the said circulars by the

Corporation. Obviously therefore, those consequences would follow subsequent to withdrawal of the circulars and cannot relate to the date prior to withdrawal of the circulars. Since the matter in issue in the said writ petition was regarding the validity of the assessment of the party before the Court in the said petition based on the said circulars, once it was admitted by the Corporation that the circulars were being withdrawn, certainly, the Court was left with no option than to observe that whatever assessments made in relation to the petitioner's case based on those circulars were rendered ineffective and therefore the respondent-Corporation was entitled to reassess the property of the parties before the Court in the said petition in accordance with the provisions of law. Obviously therefore, the observation in the said order that "all actions taken and the assessments done pursuant to the circulars" as well as the observation that "it is always open to the respondents to reassess the properties ....." cannot be said to be used in respect of the properties in relation to the assessments which were already finalised but belonging to the persons who were not parties to the said proceedings. Undoubtedly, in relation to the assessments which were not finalised on the day when the order dated 23-10-2002 was passed in the Writ Petition No.531 of 2001, certainly the Corporation would be justified in

contending that in the absence of finalisation of the assessment, since the circulars were withdrawn on the said day, the Corporation would be entitled to proceed with those assessments in accordance with law ignoring the said circulars. That however would not entitle the Corporation to reopen the assessments which were already finalised of those who were not parties to the said proceedings.

11. Referring to the decision of the Apex Court in **M/s. Shenoy and Co., represented by its partners, Bele Srinivasa Rao Street, Bangalore and others v. Commercial Tax Officer, Circle II, Bangalore and others,** reported in (1985) 2 SCC 512, it was sought to be contended on behalf of the respondents that the order dated 23-10-2002 is in the form of a declaration and nothing prevents the Courts from issuing such a declaration and once such a declaration is issued, it would be binding upon all the parties. Attention was also drawn, particularly to para 12 of the said decision, to contend that once the circulars are held to be withdrawn and therefore the assessments done based on those circulars being declared as rendered ineffective, nothing would prevent the Corporation from reassessing the properties for the purpose of property taxes. The para 12 in **M/s. Shenoy's** case (supra) reads thus:-

"12. In Makhanlal case (AIR 1971 SC 2206), an order made by the Government of Jammu and Kashmir providing for reservation of posts for certain communities was challenged before this Court as violative of Article 16 of the Constitution. This Court accepted the challenge and invalidated the promotions of respondents 3 to 83 in that case. By its judgment, this Court directed the State Government to devise a scheme consistent with the constitutional guarantee for reservation of appointment to posts and to pass appropriate orders. The State Government instead of complying with the directions given by this Court, attempted to circumvent the same by continuing those whose promotions were invalidated, giving the posts a different name. The same petitioners again moved this Court under Article 32 of the Constitution questioning the action of the State Government. The State Government justified its action contending that there were many persons who were not parties to the earlier writ petitions

> and who had been promoted prior to and/or subsequent to this Court's decision and that they were not bound by the earlier judgment. This contention was repelled by this Court. It was held that the law declared by this Court was binding on the respondent State and its officers irrespective of the fact whether those who would be affected by its pronouncement were parties to the judgment or not."

Undoubtedly, the Apex Court therein has ruled that the contention that many persons who were not parties to the earlier petitions and promotions granted prior to the decision were not affected by the judgment of the Apex Court was to be repelled and it was held that the law declared was binding on the respondent State and its officers irrespective of the fact whether those who could be affected by its pronouncement were parties to the judgment or not. It is to be noted that the said ruling was in relation to the powers of the Apex Court under Article 141 of the Constitution of India. The law as regards the powers of the Apex Court and the binding nature of the pronouncement in view of the approval contained in Article 141 of the Constitution of India is well-settled. But the same can be of no help to the

respondents in the case in hand. The contentions that the order dated 23-10-2002 is a declaratory judgment laying down the principle of law that action of assessment based on the circulars which were withdrawn to have rendered ineffective and that it would entitle the Corporation to reassess the properties are to be rejected. In order to contend that there is any such declaration, it is necessary to ascertain whether there has been adjudication of the issue in that regard by the Court, consideration of the rival contentions in relation to the facts before the Court, and the consequential findings arrived at on such adjudication by the Court in order to say that there has been a declaration of law in that regard by the Court. It is well-settled by a catena of decisions of the Apex Court that the decision is an authority for what it decides and not what can logically be deduced therefrom. It is well-settled that the enunciation of the reasons or principle upon which a question before the Court has been decided is alone binding as a precedent. When Court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same {vide: **Krishena Kumar v. Union of India,** reported in (1990) 4 SCC 207, **Commissioner of Income-tax v. M/s. Sun Engineering Works (P.) Ltd.,** reported in AIR 1993 SC 43, **A.S.**

Narayana Deekshitulu v. State of Andhra Pradesh and others, reported in AIR 1996 SC 1765 and **Municipal Corporation of Delhi v. Gurnam Kaur,** reported in AIR 1989 SC 38}. It was specifically held by the Apex Court that a non-speaking order, neither disclosing the fact nor the reasons, cannot be said to be laying down a binding precedent as such {**Government of India v. Workmen of State Trading Corporation and others,** (1997) 11 SCC 641}. In what cases a decision can be said to lay down a binding precedent and how to the deduce the ratio decidendi has been well explained by the Apex Court in **Union of India and others v. Dhanwanti Devi and others,** reported in (1996) 6 SCC 44. Considering the law laid down for ascertaining the ratio of a decision and which alone can be said to be binding, and for understanding exact decision in a judgment or an order, the contention that the order dated 23-10-2002 amounts to a general declaration regarding all the assessments which were finalised even in the past based on the circulars which were withdrawn on the said day are ineffective is to be rejected being totally devoid of substance. The observation relating to entitlement of the Corporation to reassess the property tax was relating to the matter in issue before the Court in that case. The observation is not even a general observation as such in relation to all the assessments done and finalised prior to the date of the said order. In fact,

even general observation in a case cannot be applied in interpreting the provision of law in a statute {vide: **M/s. Raval & Co. v. K.G. Ramchandran,** AIR 1974 SC 818}. Once it is not in dispute that the said Act does not permit reassessment, the impugned order and notice, to the extent it relates to the period prior to 31-3-2002, cannot be sustained.

12. There is yet another reason, as rightly submitted by the learned Advocate for the petitioners, which would not permit the Corporation the reassessment of the rateable value for the period prior to 31-3-2002. The Division Bench of this Court in **Satish Dattatray Shivalkar v. Pimpri-Chinchwad Municipal Corporation, Pune and another,** reported in 2002 (2) Mh.L.J. 619, relied upon by the learned Advocate for the petitioners, after taking note of Rule 20 of the Taxation Rules framed under the Bombay Provincial Municipal Corporation Act, 1949 and Section 82 of the Bombay Municipal Boroughs Act, 1925, which are similar to the provisions contained in Section 154 of the said Act and the rules framed in relation to assessment of the rateable value, and taking into consideration the decisions of the Apex Court in **Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag and others,** reported in (1976) 4 SCC 830 and **Kalyan Municipal Council and others v. Usha Paper Products (P) Ltd. and another,** reported

in (1988) 3 SCC 306 as well as the decision of the Full Bench of this Court in **Sholapur Municipal Corporation v. Ramchandra Ramappa,** reported in 1973 Mh.L.J. 128 had held that:-

> "Any amendment in the assessment book by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part of the assessment book shall be and can only be effective during the currency of official year. The expression "official year" defined under Section 2(44) of the Act of 1949 read with Rule 20(1)(e) indicates without doubt the legal position that the property tax being tax for the official year must be levied only during the official year. In view thereof, it was not open for the Commissioner to amend or alter assessment entry of petitioner's property with retrospective effect."

The fact that the provisions which were the subject-matter of consideration in **Satish Dattatraya Shivalkar's** case (supra) and the provisions of law

applicable to the facts of the case are in pari materia is not in dispute. It is also not in dispute that the assessments were sought to be reopened in the case in hand by the intimation dated 22-1-2003. Being so, the amendment to the assessments, if any, based on such intimation could be in relation to the financial year 1-4-2002 to 31-3-2003 but cannot be prior to the date of 1-4-2002. I must hasten to observe that this does not mean that reassessment for the period from 1-4-2002 is valid and lawful. Certainly that is a different issue to be considered in the appeal filed by the petitioners. However, by no stretch of imagination the assessment can relate to the day prior to 1-4-2002 bearing in mind the law laid down by this Court in Satish Dattatraya Shivalkar's case.

13. It is, however, sought to be contended on behalf of the respondents that it is not a fresh assessment as such for the first time but it was reassessment pursuant to the order of the High Court dated 23-10-2002. As already observed above, the said order nowhere entitles the respondents to reopen the assessment which had already been finalised. It is a matter of record that the assessment in relation to the petitioners' property was finalised on 18-4-2002. Undoubtedly, therefore, for the period upto 31-3-2002 that would stand as finalised and could not be reopened under any circumstance.

Whether there was justification for fresh assessment in relation to the financial year 2002-2003 onwards is totally a different issue required to be dealt with in the appeal. In the circumstances, therefore, the reassessment sought to be done for the financial year 2001-2002 is to be held as absolutely bad in law and is liable to be quashed and set aside while confirming the assessment which was already finalised for the said financial year at the rateable value of Rs.42,81,315/- per annum.

14. As regards the assessment for the period from 1-4-2002 onwards, undoubtedly the petitioners have filed the appeal under Section 217 before the Competent Court. All the issues sought to be raised in this petition in relation to the said reassessment can certainly be agitated by the petitioners in the said appeal. Needless to say that the appellate authority will have to bear in mind the observations made hereinabove in relation to the order dated 23-10-2002 in the Writ Petition No.1531 of 2001 while deciding the said issue in relation to the such assessment also. In the circumstances, therefore, it is not necessary for this Court in this petition to deal with the point relating to reassessment pertaining to the period subsequent to 1-4-2002 leaving it open for consideration by the appellate authority in accordance with the provisions of

law simultaneously leaving open all the issues in the matter for consideration by the said authority, albeit bearing in mind the observations hereinabove.

15. The petition, therefore, succeeds. The rule is made absolute in above terms with no order as to costs.